



# Chemical Safety and Hazard Investigation Board

## Office of General Counsel

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### Memorandum

To: Board Members

From: Christopher Warner

Cc: Leadership Team  
Rachael Gunaratnam  
Christina Morgan

Subject: Board Action Report – Notation Item 843

Date: May 6, 2011

On April 20, 2011, Notation Item 843 was calendared. This item would have changed the status of the Urgent Recommendation to the Occupational Safety and Health Administration, from the Kleen Energy investigation, to “Open-Unacceptable Response.” Comments submitted by Members Bresland and Wark are attached to this memorandum.

### Voting Summary – Notation Item 843

**Disposition: CALENDARED**

**Disposition date: April 20, 2011**

	Approve	Disapprove	Calendar	Not Participating	Date
<b>R. Moure-Eraso</b>	X				4/19/2011
<b>J. Bresland</b>		X			5/2/2011
<b>M. Griffon</b>	X				5/2/2011
<b>W. Wark</b>			X		4/20/2011
<b>W. Wright</b>				X	

Notation No.: 843

Subject: Status Change – Recommendation 2010-01-I-CT-UR1

Therefore, pursuant to its authority, the Board hereby votes to designate **Recommendation 2010-01-I-CT-UR1** with the status of **Open-Unacceptable Response**.

I **APPROVE** this notation item **AS PRESENTED**.

I **CALENDAR** this notation item for discussion at a Board meeting.

*Some of my concerns are discussed below or on the attached memorandum.*

I **DISAPPROVE** this notation item.

*A dissent is attached.*

*I will not file a dissent.*

I am **NOT PARTICIPATING**.

Date: 4/20/11

Member: Wilmaris B. Wark

- Would like a briefing to the Board w/ an opportunity for the members to ask questions.

Wark

May 2, 2011

Subject: Notation Item 843: Status Change to the Urgent Recommendation to OSHA (2010-01-I-CT-UR1)

I have voted to disapprove this Notation Item for the following reasons:

In the December 18, 2010 from Dr. David Michaels he states that *"OSHA has placed the power plant construction industry on notice regarding hazards associated with flammable gas cleaning and purging operations"*. According to Dr. Michaels they have sent a letter to the 125 power plants that the CSB has identified as planning to commission new natural gas fired combustion turbines. That letter states that *"If any employee dies as a result of an explosion associated with a gas blow ..... OSHA will consider referring the incident to the Department of Justice for criminal prosecution....."*. Dr. Michaels also states that OSHA will consider promulgating new flammable gas safety regulations during OSHA's next regulatory review.

It is my opinion that the action taken by OSHA to notify power plants of the consequences of a gas blow fatality and the consideration of new flammable gas safety regulations should permit the Recommendation Status Change to be designated "Open – Acceptable Response" with the option to reevaluate when OSHA publishes its next regulatory review.

*Bresland 5/2/11*  
John Bresland

Board member



U.S. Chemical Safety and Hazard Investigation Board

MEMORANDUM

April 19, 2011

To: Board Members  
From: Rafael Moure-Eraso  
Cc: Manuel Gomez  
Rachael Gunaratnam  
Christina Morgan  
Subject: Notation Item 843

A handwritten signature in black ink that reads "Rafael Moure-Eraso".

Attached for your review and vote is Notation Item 843. This item provides for the approval of a change in status to one of the Urgent Recommendations from the Kleen Energy investigation, based upon an evaluation of the recipient's response prepared by the Office of Recommendations. Specifically, this item would change the status of the Urgent Recommendation to OSHA to "Open-Unacceptable Response." This response evaluation and proposed status change has been reviewed and approved by the Director of Recommendations.

You may direct any questions about this item to the Office of Recommendations staff members named in the evaluation report, which is attached to the item. Additional background information and documentation is posted on the G Drive at: G:\Recommendations\Recommendations for Board Vote\2011-04-15. For your convenience, you will also receive an e-mail with the link to the background information and documentation. Please note that your computer must be connected to the CSB network either at the office or via VPN in order to access these files.

Please return your completed vote sheet to Chris Kirkpatrick no later than the close of business on May 3, 2011. Thank you for your attention to this item.

**U.S. Chemical Safety and  
Hazard Investigation Board**



Hon. Rafael Moure-Eraso  
Chairperson

Hon. John S. Bresland  
Board Member

Hon. Mark Griffon  
Board Member

Hon. William B. Wark  
Board Member

Hon. William E. Wright  
Board Member

**CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD  
MEMBER VOTING RECORD**

**Notation No.: 843**

**Voting Period: April 19 – May 3, 2011**

**Subject:** Status Change – Urgent Recommendation to the Occupational Safety and Health Administration (2010-01-I-CT-UR1) from the Kleen Energy Investigation (2010-01-I-CT)

Whereas,

1. The Board is authorized by 42 U.S.C. § 7412(r)(6)(C)(i) to “investigate . . . and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release resulting in a fatality, serious injury or substantial property damages;”
2. The Board is further authorized by 42 U.S. C. § 7412(r)(6)(C)(ii) to “issue periodic reports to the Congress, Federal, State and local agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration, concerned with the safety of chemical production, processing, handling and storage, and other interested persons recommending measures to reduce the likelihood or the consequences of accidental releases and proposing corrective steps to make chemical production, processing, handling and storage as safe and free from risk of injury as is possible;”
3. The Board has issued such a recommendation to the **Occupational Safety and Health Administration** based upon the findings of the Board’s Kleen Energy investigation;
4. Consistent with Order 022, the Board is to vote on changes to the status of recommendations;
5. The staff of the Office of Recommendations proposes that the status of the above named recommendation should be changed, as described in the attached Recommendation Response Evaluation.

Notation No.: 843

Subject: Status Change – Recommendation 2010-01-I-CT-UR1

Therefore, pursuant to its authority, the Board hereby votes to designate **Recommendation 2010-01-I-CT-UR1** with the status of **Open-Unacceptable Response**.

\_\_\_\_\_ I **APPROVE** this notation item **AS PRESENTED**.

\_\_\_\_\_ I **CALENDAR** this notation item for discussion at a Board meeting.

\_\_\_\_\_ *Some of my concerns are discussed below or on the attached memorandum.*

\_\_\_\_\_ I **DISAPPROVE** this notation item.

\_\_\_\_\_ *A dissent is attached.*

\_\_\_\_\_ *I will not file a dissent.*

\_\_\_\_\_ I am **NOT PARTICIPATING**.

Date: \_\_\_\_\_

Member: \_\_\_\_\_